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IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.433 of 2000
In
Civil Writ Jurisdiction Case No.10561 of 1999

The Controller of Examination, Bihar Combined Entrance Competitive Examination, 1999, I.A.S. Association Building near Patna Airport, P.O. Veterinary College, Patna.

…… Appellant

Versus

1. Nidhi Sinha, D/O Surendra Nath Sinha, Sinha Lab, Nala Road, near B.K. Mission, Patna.
2. The State of Bihar

…… Respondents

Appearance:

For the Appellant: Mr. Vikas Kumar
For the Respondents: Mr.

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6 08-01-2015 The present appeal arises out of a common judgment and order dated 11.2.2000 passed in C.W.J.C. No.10561 of 1999 filed by the respondent No.1 of this case as also C.W.J.C. No.10587 of 1999 filed by one Anju Kumari.

Both the writ applications were allowed with the following observations and directions:-

> "For all the aforesaid reasons both the writ petitions are allowed. The respondents are directed to fill up all the 9 reserved seats for RCG category with such girl students who have competed for admission in MBBS course only from RCG category. Those girl students who have also competed in the BC category on account of better merit must not be included in the RCG category for

the purpose of computation of percentage of reservation for the RCG category. The respondents are further directed to admit the petitioners and such other girl candidates from RCG category who may be eligible for admission into MBBS course on account of their position in the RCG list as early as possible and preferably within two weeks from the date of production/communication of a copy of this order. It is made clear that right of option available to the RCG candidates will stand reduced to the extent such option was already given to the 6 girl students who have competed for MBBS courses in the BC category."

The appellant herein filed two separate appeals including L.P.A. No.447 of 2000, in which the said Anju Kumari was respondent No.1.

Both the appeals were heard together but subsequently due to non-prosecution stood dismissed for default and upon restoration, L.P.A. No.447 of 2000 was taken up separately and by order dated 16.4.2013, the same was disposed of with observations that the matter being that of admission to MBBS course as early as in 1999, in view of the passage of time, the cause of action shall not survive.

Learned counsel for the appellant- the Controller of

Examination, Bihar Combined Entrance Competitive Examination,1999, however, submits that important issues with regard to the principles applicable in such matter are involved and thus despite the fact that the matter relates to admission in the year 1999, it requires to be considered and disposed of on merits.

It is submitted by learned counsel for the appellant that the order under appeal is contrary to the decision of a Division Bench of this Court in the case of G.V. Nutan vs. The Bihar Combined Entrance Competitive Examination Board through the Controller of Examination and others: 2014 (2) PLJR 725, in paragraph Nos. 57 to 59 of which it has been held as follows:-

> "57. In the case of Ramesh Kumar (supra), the Constitution Bench has clearly pointed out, at paragraph 39, that aggregate reservation should not exceed 50 per cent of all the available vacancies. Having so indicated the permissible limit of reservation, the Constitution Bench has also observed, in Ramesh Kumar (supra) that if an MRC (meritorious reserved category) candidate is adjusted against the reserved category vacancy, and if the seat, vacated by him, in the general category, is further allotted to a candidate of reserved category, then, the aggregate reservation could possibly exceed 50 percent of all available seats and, therefore, when an MRC (meritorious reserved category) candidate is

adjusted against the reserved category, he should be counted as a part of the reservation pool for the purpose of computing the aggregate reservation pool and the seat, which such an MRC (meritorious reserved category) candidate vacates in the general pool, would have to, therefore, be offered, on the basis of merit, to the candidate of the general category and this is the viable solution, because allotment of seats, meant for general category candidates vacated by MRC (meritorious reserved category) candidate, to a relatively lower ranked reserved category candidate, would result in the aggregate reservation exceeding 50 per cent of the total number of available seats.

58. The relevant observations, appearing, in this regard, in the decision of Ramesh Kumar (supra), may be found in paragraph Nos. 39, 42 and 46 of the report.

59. Situated thus, it becomes clear that the impugned policy does not withstand the test of the Constitution and is ex facie violative of Article 14 of the Constitution of India. The impugned policy cannot, therefore, be sustained and has been accordingly set aside and struck down in this appeal".

The aforesaid Division Bench decision relies upon a decision of the Supreme Court in the case of Union of India vs. Ramesh Ram and others: (2010) 7 S.C.C. 234 relying upon the observations made therein in paragraph Nos. 36, 39, 42, 46 and 72 of the said decision.

A perusal of the aforesaid decision of the Supreme Court in Ramesh Ram's case (supra) shows that the question considered therein was as to whether the reserved category candidates belonging to OBC, SC/ST categories, who are selected on merit and placed in the list of general/unreserved vacancies on account of their merit without the benefit of any relaxation/concession, can opt for a higher choice to migrate to the respective reserved categories.

While considering the aforesaid question, the Supreme Court noticed the strong reliance placed on the earlier decision of the Apex Court in the case of Ritesh R. Sah vs. Dr. Y.L. Yamul and others : (1996) 3 Supreme Court Cases 253 and observed that there was an obvious distinction between qualifying through an entrance test for securing admission in Medical College and qualifying in UPSC examinations, as stated in paragraph Nos. 31 and 32 of the decision in Ramesh Ram's case (supra) which is quoted below:-

> "31. The respondents have also placed strong reliance on this Court's decision in Ritesh R. Sah v. Dr. Y.L. Yamul. The question in that case was whether a reserved category candidate who is entitled to be selected for admission in open competition on the basis of his/her own merit should be counted against the quota meant for the reserved category or should he be treated as a general

candidate. The Court reached the conclusion that when a candidate is admitted to an educational institution on his own merit, then such admission is not to be counted against the quota reserved for Schedule Castes or any other reserved category. However, it is pertinent to note that this decision was given in the context of admissions to medical colleges in which G.B. Pattanaik, J. (as His Lordship then was) had held: (SCC PP.26l e-262a, para 17)

"17… In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of

his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate."

32. There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three service [i.e. Indian Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS) when they are asked for prefernces. A majority of the candidates prefer IAS as the first option. In this respect, a reserved category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the general category especially because if he had availed the benefit of his reserved category status, he would have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16 (2)

provides that an MRC candidate is at liberty to choose between the general quota or the respective reserved category quota."

From a perusal of the decision in G.V. Nutan's case (supra), we find that the said distinction noted by the Supreme Court itself in the matter of appointment to a civil service through examinations conducted by UPSC vis-à-vis admission in Medical Colleges, which is also the case in the present matter, was not brought to the notice of the Division Bench.

For the aforesaid reasons, we are unable to agree with the conclusions drawn by the Division Bench in G.V. Nutan's case (supra) and are of the view that the matter requires consideration by a Full Bench of this Court. The matter is, accordingly, referred to a Full Bench.

Learned counsel for the appellant is directed to file another copy of the brief within a period of one week from today.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Vikash Jain, J)

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